Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

October Term, 1996

GUL JAISINGHANI,

Petitioner,

vs.

ANTHONY PATCHETT,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether a nonresident interviewee may be subject to personal jurisdiction in the plaintiff's home state based upon the fact that the interviewee made defamatory statements to a reporter with knowledge that the statements would cause injury to the plaintiff in his home state?

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Gul Jaisinghani, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The unreported opinion of the United States Court of Appeals for the Eleventh Circuit is reproduced in the Appendix filed herewith ("App.") at (App.A). The unreported opinion and order of dismissal of the district court in this case is reproduced in the Appendix at (App.B).

STATEMENT OF JURISDICTION

On December 16, 1996, the United States Court of Appeals for the Eleventh Circuit issued its order affirming, per curiam, the district court's order of dismissal. The Court of Appeals'

Order Denying Appellant's Petition for Rehearing was issued on January 24, 1997. The Judgment, issued as a Mandate, was entered on February 3, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution
Amendment XIV

The relevant provision of Amendment XIV to the United States Constitution is set forth below:

> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 48.193, Florida Statutes (1995)

The relevant provision of Section 48.193, Florida Statutes (1995), is set forth below:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts: . . .
>
> (b) Committing a tortious act within this state.

STATEMENT OF THE CASE

Respondent, Anthony Patchett (hereafter "Patchett"), an experienced Assistant District Attorney in Los Angeles, California, was charged with the prosecution of Petitioner, Gul Jaisinghani (hereafter "Jaisinghani"), a Florida resident and businessman, for environmental waste violations in California. On several occasions, Patchett both spoke telephonically and in person with a reporter for the *Kansas City Star,* a nationally known and circulated newspaper, regarding Jaisinghani's alleged environmental activities and his unrelated activities as a fundraiser for the national organization known as the Veterans of Foreign Wars (hereafter "VFW").

During these interviews, Patchett voluntarily made false statements to the reporter concerning Jaisinghani and his companies, either directly or by implication, including statements that Jaisinghani skimmed cash donations he received from donors for the VFW and that he attempted to conceal such activities by sending the cash donations to his relatives at Bank of Credit and Commerce International (hereafter "BCCI"), where he allegedly was an investor. Patchett made these statements with knowledge that they were false or with reckless disregard for their truth or falsity.

Moreover, Patchett voluntarily provided the reporter with documentation, including portions of an interview with a former disgruntled employee of Jaisinghani. The interview discussed at length Jaisinghani's business activities in various states, including Florida, and the location of Jaisinghani's residence, also in Florida.

At the time he made these statements to the reporter and provided the additional documentation, Patchett knew, as an experienced prosecutor, that he was talking to a reporter for the *Kansas City Star* and that his statements and other information would be republished in the *Kansas City Star* and transmitted nationally via electronic media, particularly to those states wherein Jaisinghani allegedly conducted his fundraising activities for the nationally-based VFW.

At the time he made the statements to the reporter, Patchett was preparing for the trial against Jaisinghani on the environmental waste charges. Patchett did not have any good faith explanation for making these defamatory statements to a reporter such a short time prior to trial. The defamatory statements appear to have been made as part of an intentional attempt by the prosecutor to influence public opinion against the defendant prior to trial, either to influence the potential jury pool or to cause damage to the defendant's business affairs to hamper his ability to put forth an appropriate defense.

As a direct result of the false information provided by Patchett, the *Kansas City Star*, on or about September 20, 1992, published a "smear campaign" series of articles ("the Article") which included two stories entitled "Fundraiser Takes 90 Percent" and "Promises in Pitch All But Forgotten," together with photos, boxes, headlines and captions, that defamed Jaisinghani and his companies and severely injured his reputation. Patchett's statements provided a substantial basis for the Article.

On or about September 21, 1992, the *Kansas City Star* articles were circulated by ABC, the *Kansas City Star* and an on-line computer service across the country, including to Florida, the state of Jaisinghani's residence and businesses. On or about July 26, 1994, the Repository newspaper of Canton, Ohio published an article entitled "Fundraising for VFW in Ohio Raises Concern." The article republished the statements which Patchett had made to the *Kansas City Star*.

Jaisinghani's complaint in this matter was originally filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida on December 22, 1995 and served on Patchett on January 2, 1996. The Complaint contained one count for defamation. On January 22, 1996, Patchett served a Motion to Abate the Action for Lack of Personal Jurisdiction and Motion to Quash Service of Process in the state court action. On January 25, 1996, Patchett served a Notice of

Removal in the Miami Division of the United States District Court for the Southern District of Florida and an Amended Motion to Abate the Action for Lack of Personal Jurisdiction and Motion to Quash Service of Process in the state court, which subsequently was refiled in federal court pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure and/or 28 U.S.C. Section 1406(a). The federal basis for jurisdiction is diversity of citizenship as defined in 28 U.S.C. Section 1441.

On March 26, 1996, the district court entered its order granting Patchett's motion to dismiss. The district court found the following: 1) that Patchett had conducted a telephone interview from California with a reporter in Missouri; 2) that the reporter's newspaper, the *Kansas City Star*, had limited distribution in Florida;[1] and 3) that Jaisinghani resided in Florida. (App.B-3). The court declined to assert personal jurisdiction over Patchett on grounds that Patchett "has insufficient contacts with the state of Florida." (App.B-1). Although the court found several factors connecting Patchett to Florida, the court held that "[s]imply giving an interview to a reporter is not enough to cause [a defendant] to anticipate being haled into court in Florida." *Madara v. Hall*, 916 F.2d 1510, 1519 (11th Cir. 1990). (App.B-3). Jaisinghani's Notice of Appeal was timely filed on April 12, 1996.

On December 16, 1996, the United States Court of Appeals for the Eleventh Circuit issued its order affirming, per curiam, the district court's order of dismissal. The court found that Jaisinghani's defamation complaint was based on comments made by Patchett to a reporter for a Kansas City newspaper and "articles that made their way to Florida through the actions of the Kansas City newspaper and other third persons." (App.A-2). Again, the court relied on its previous holding in *Madara, supra,* and expressly rejected Jaisinghani's reliance on *Calder v. Jones,* 465 U.S. 783 (1984), and its

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[1]Specifically, the court found that the *Kansas City Star* is not widely distributed in Florida and that the newspaper is available only through on-line computer services. The court made these findings without any factual basis in the record.

progeny. The court held that making false defamatory statements to a reporter of a nationally circulated newspaper with knowledge that the statements will cause harm to the plaintiff does not establish sufficient minimum contacts to satisfy the requirements of the Due Process Clause of the United States Constitution. Instead, the court interpreted *Calder* to require the defendant actively participate in the preparation or publication of the defamation, inferring, without specifically finding, that Patchett did not so participate. (App. A-2). The Court of Appeals' Order Denying Appellant's Petition for Rehearing was issued on January 24, 1997.

REASONS FOR GRANTING THE WRIT

This Court should grant the Petition for Writ of Certiorari to resolve a split among the federal circuit courts of appeals on a fundamental principle of jurisprudence regarding the imposition of in personam jurisdiction over nonresident defendants by a forum state in actions based on the intentional tort of defamation.

The circuit courts of appeals provide dissonant interpretations of this Court's requirements for imposition of such jurisdiction in defamation cases as enunciated in *Calder*. The circuit courts disagree on whether the fact that an interviewee makes false defamatory statements to a reporter with knowledge that the statements will cause injury to the plaintiff in his home state establishes sufficient minimum contacts to satisfy the requirements of the Due Process Clause of the United States Constitution.

Granting this Petition provides this Court with the opportunity to reemphasize the basis for its holding in *Calder* in light of the rapid and somewhat untethered growth of the electronic media. Such expansion can only serve to increase dramatically the dissemination of intentionally defamatory material. The judicial system's interest in providing injured parties reasonable access to redress for the intentional inflic-

tion of injury by a tortfeasor outweighs the judicial system's interest in shielding an intentional tortfeasor from suit in a forum to which his defamatory statements are directed.

This Court has long established a two-pronged analysis for determining whether personal jurisdiction can be exercised over a nonresident.[2] First, a court must determine whether the defendant can be subjected to jurisdiction under a state's long-arm statute.[3] Once the requirements of the state statute have been met, the Due Process Clause of the Fourteenth Amendment permits the imposition of personal jurisdiction over a defendant in any state with which the Defendant has "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) (citing *Milliken v. Meyer,* 311 U.S. 457, 463 (1940)).

The notion of "minimum contacts" sufficient to confer personal jurisdiction over a nonresident defendant evolved through the development of a series of "stream of commerce/product liability" decisions rendered by this Court. Those cases provide that a nonresident defendant must have "fair warning" that a particular activity may subject him to the jurisdiction of a foreign court. A party whose activities are "purposefully directed toward the forum State," *Asahi Metal Indus. Co. v. Superior Court of California,* 480 U.S. 102, 112 (1987) (plurality opinion) (citing *Burger King Corp. v.*

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[2]There are two types of personal jurisdiction: specific and general. Specific jurisdiction is based on the party's contacts with the forum state that are related to the cause of action while general jurisdiction arises from a party's contacts with the forum state that are unrelated to the litigation. *Madara v. Hall,* 916 F.2d 1510, 1516 n.7 (11th Cir. 1990) (citing *Helicopteros Nacionales de Colombia, N.A. v. Hall,* 466 U.S. 408, 414 nn. 8-9 (1984)). The case in question involves the application of specific personal jurisdiction.

[3]The court below found that Jaisinghani had made the requisite showing under Florida's long-arm statute to satisfy the first prong of the analysis. FLA. STAT. § 48.193(1)(b)(1995).

Rudzewicz, 471 U.S. 462, 476 (1985), is determined to have fair warning and should reasonably anticipate being haled into court there when the resulting litigation arises out of or relates to those activities, *Burger King,* 471 U.S. at 472. This line of negligence cases require more than mere foreseeability that the acts of third parties may affect the forum. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 295-96 (1980). Courts, instead, must focus on the acts of the nonresident defendant to see if the defendant has a "substantial connection" with the forum state.[4]

In 1984, however, this Court developed a distinct test for the application of personal jurisdiction to a nonresident where the cause of action is not "untargeted negligence" but rather the intentional tort of defamation. *Calder*, 465 U.S. at 790. In *Calder*, this Court found that, whatever the intervening actions or control of third parties may be, a defendant who commits "... intentional, and allegedly tortious, actions" with the knowledge that the actions would have a significant impact upon the plaintiff and that the injury would be felt in the state in which the plaintiff lives and works must "reasonably anticipate being haled into court there to answer for the truth of the statements...." *Calder,* 465 U.S. at 789-90 (citations omitted).[5] "An individual injured in [his home state] need not go

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[4]In *Asahi,* this Court stated:

> The placement of a product into the stream of commerce without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State.... But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

Asahi, 480 U.S. at 112.

[5]Once, a plaintiff has proved "minimum contacts" with the forum state, the burden shifts to the defendant to show that traditional notions of fair play and substantial justice outweigh the minimum contacts. The factors used to make such a determination include 1) the burden on the defendant in

to [the tortfeasor's home state] to seek redress from persons who, though remaining in [their home state], knowingly cause the injury in [the plaintiff's home state]." *Calder,* 465 U.S. at 790.

The reasoning for this distinction is founded in the application of basic tort concepts, including the tortfeasor's "state of mind" requirement: an intentional tortfeasor is held to a higher standard of responsibility than a mere negligent tortfeasor because the intentional tortfeasor has direct knowledge and control over the alleged tortious actions. Such knowledge and intent eliminate the need for a negligence "foreseeability" or "third party intervention" test. *See* W. Page Keeton, *Prosser and Keeton on Torts,* § 6, at 30, § 28, at 160-61 (5th ed. 1984). It is axiomatic that this Court would desire to further this basic public policy distinction between requirements for negligence actions and intentional torts.

I. A NONRESIDENT INTERVIEWEE IS SUBJECT TO PERSONAL JURISDICTION IN THE PLAINTIFF'S HOME STATE BASED UPON THE FACT THAT THE INTERVIEWEE MADE FALSE DEFAMATORY STATEMENTS TO A REPORTER WITH KNOWLEDGE THAT THE STATEMENTS WOULD CAUSE INJURY TO THE PLAINTIFF IN HIS HOME STATE

In its opinion below, the Eleventh Circuit declined to assert personal jurisdiction over Patchett on the ground that the fact that Patchett made false defamatory statements to the *Kansas City Star* with knowledge that they would harm the Plaintiff in Florida did not establish sufficient minimum con-

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defending the lawsuit; 2) the forum state's interest in adjudicating the dispute; 3) the plaintiff's interest in obtaining convenient and effective relief; 4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and 5) the shared interest of the states in furthering fundamental substantive social policies. *Burger King,* 471 U.S. at 477.

tacts to satisfy the Due Process Clause.[6] (App.A-2). The court specifically rejected the application of *Calder* to this defamation action.

In *Calder,* this Court considered whether a California court could assert personal jurisdiction over two Florida residents for writing and editing an allegedly defamatory article for the *National Enquirer* about Shirley Jones, an entertainer residing in California.[7] Like Patchett, the individual defendants moved to dismiss the complaint for lack of personal jurisdiction.

The *Calder* defendants argued that personal jurisdiction was improper because they lacked minimum contacts with California and, as reporter and editor employees only, were not responsible for the circulation of the article in California; thus, they could not "foresee" that the article would inflict injury in California, as required by this Court's decisions in "stream of commerce" cases such as *World-Wide Volkswagen. Calder,* 465

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[6]In so doing, the Eleventh Circuit relied on its previous opinion in *Madara v. Hall,* 916 F.2d 1510 (1990). In *Madara,* the plaintiff was an international recording artist who neither resided in the forum state of Florida nor conducted substantial business activities in Florida, but who filed suit in Florida because of its lengthy statute of limitations.

The New York defendant gave an interview to a California reporter for an obscure trade magazine with extremely limited distribution in Florida. Moreover, the plaintiff in *Madara* presented no evidence that the defendant knew of any connection with Florida, because, there was none.

The *Madara* court held that: "Simply giving an interview to a reporter is not enough to cause Hall to anticipate being haled into court in Florida." *Madara,* 916 F.2d at 1519. In its analysis, the Eleventh Circuit failed to apply *Calder,* but instead solely based its denial of personal jurisdiction on the "stream of commerce" cases enunciated by this Court and the accompanying foreseeability argument inapplicable to intentional tort cases.

[7]The *Calder* defendants were employees of the *National Enquirer,* a Florida corporation with its principal place of business in Florida. Both defendants lived and worked in Florida. The allegedly libelous story concerned the forum state activities of Ms. Jones and the brunt of the emotional distress and reputational damages caused by the article occurred in California, the forum state.

U.S. at 790.[8] Justice Rehnquist, however, writing for a unanimous court, flatly rejected this negligence theory of foreseeability as applicable to the intentional tort of defamation:

> Petitioners' analogy does not wash. Whatever the status of their hypothetical welder, petitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California. . . .
>
> An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California.

Id. at 790. Although the individual *Calder* defendants were involved, as reporter and editor respectively, in the preparation of the defamatory article, their role as employees of the offending publication was not the determining factor in *Calder*.

In reaching its decision, this Court focused on two primary factors: first, it considered the intentional nature of the tort of defamation, and, second, it emphasized the plaintiff's residence in California as a factor enhancing the defendants' contact with the forum state because the defendants knew plaintiff would be most injured in California because she resided therein. Thus, in determining whether Patchett was subject to personal jurisdiction under *Calder,* the Eleventh Circuit should have considered both the intentional nature of the tort of defamation and whether Patchett knew Jaisinghani would suffer injury in Florida, his state of residence, as a result of Patchett's defamatory statements. The Eleventh Circuit applied neither test.

This misapplication of *Calder* in a defamation action is especially detrimental to a forum state's imposition of personal jurisdiction given the "coming of age" of the media through the

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[8]The defendants — using a negligence theory — likened themselves "to a welder employed in Florida who works on a boiler which subsequently explodes in California." *Id.* at 789.

advent of electronic transmission communications. Communications provided to the broadcast media are instantly transmitted via various electronic media throughout this country and the world. A tortfeasor intending to cause harm to a person residing in another state need not leave his state to cause devastating harm to that person. Such a tortfeasor must still be held accountable in the state to which his statements are directed.

Other courts addressing this factual scenario, including the First Circuit Court of Appeals, have held that an interviewee may be subject to personal jurisdiction in the plaintiff's home state where the interviewee made statements to a reporter with knowledge that the statements would cause harm to the plaintiff in his home state. The Eleventh Circuit's decision creates a conflict with these federal courts.

In *Hugel v. McNell,* 886 F.2d 1 (1st Cir. 1989), *cert. denied,* 494 U.S. 1079 (1990), a case remarkably similar to the instant action, the First Circuit held that the state of New Hampshire could exercise personal jurisdiction over two defendants who met with two reporters for a nationally distributed newspaper, *The Washington Post*, and provided substantial information about alleged illegal securities transactions engaged in by the plaintiff, a New Hampshire resident and businessman.[9]

The *Hugel* court found that "unlike the products liability cases from which most of the Supreme Court's pronouncements on personal jurisdiction and the application of state long-arm statutes has evolved, the case at bar involves the intentional tort of defamation." *Id.* at 4. The First Circuit then applied *Calder* to the facts and concluded that the state of New Hampshire could assert personal jurisdiction over the nonresident defendants because the defendants: 1) directed their

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[9]The resulting news story, which was disseminated throughout the country via national news services, caused plaintiff to resign his position as a Deputy Director of the Central Intelligence Agency, and damaged his reputation as a businessman in New Hampshire.

actions at the New Hampshire resident; 2) knew the dissemination of the allegedly libelous information would have a devastating impact on the plaintiff; and 3) intended the brunt of the injury to be felt in New Hampshire where the plaintiff resided and conducted his business affairs. *Id.* at 5. *Hugel* specifically rejected as irrelevant the defendants' argument that intervening actions of *The Washington Post* determined the direction of the tortious activity and brunt of injury.[10] *Id.; see also Burt v. The Board of Regents of the University of Nebraska,* 757 F.2d 242 (10 Cir. 1985), *vacated on other grounds, Connolly v. Burt,* 475 U.S. 1063 (1986) (alleged defamation from single letter gave rise to imposition of personal jurisdiction under *Calder* due to intentional nature of defendant's conduct and its calculated injurious effect in forum state).[11]

State courts have reached a similar result in similar cases, finding that a nonresident is subject to personal jurisdiction in the plaintiff's home state based upon defamatory statements

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[10]The court specifically found:

> The McNells urge that the intervening actions of the *Washington Post* and its employees after the McNells met with the reporters determined where their tortious acts were directed and where the brunt of the injury would be felt. But the intervening actions of the *Washington Post* are irrelevant to the question of whether New Hampshire can exercise personal jurisdiction over the McNells. The complaint alleges that the McNells committed an intentional tort, directed their actions toward the forum state, and knew the brunt of their devastating blow caused by the release of the allegedly libelous material would be felt in the state where Hugel resides and has established reputation as a businessman and public servant.

Id. at 5.

[11]*But see TicketMaster-New York v. Alioto,* 26 F.3d 201 (1st Cir. 1994) (California lawyer's telephone interview satisfied purposeful availment requirement but jurisdiction denied upon factor of onerous burden on requiring defendant to appear in forum state); *McBreen v. Beech Aircraft Corp.,* 543 F.2d 26 (7th Cir. 1976) (where defendant attorney's telephonic remarks initiated by reporter in forum state were neither solicited or initiated by defendant, defendant did not place his remarks in stream of commerce and contact with forum was insufficient to confer personal jurisdiction).

made to a reporter with knowledge that the statements would cause harm to the plaintiff in his home state. *Smith v. Cuban American National Foundation,* 657 So.2d 86 (Fla. 3d DCA 1995) (Florida courts had personal jurisdiction over nonresident in defamation action based upon statement made in a televised interview conducted in Washington D.C. for a documentary film where it was foreseeable that the subject film would be aired in Florida); *Cole v. Doe,* 258 N.W. 2d 165 (Mich. Ct. App. 1977) (Michigan courts had personal jurisdiction over nonresident based upon conversation in California with a national columnist).[12]

In refusing to apply the *Calder* effects test to the facts of the instant case, the Eleventh Circuit requires the plaintiff in defamation actions to meet an unnecessary and judicially undesirable negligence requirement and, in so doing, obstructs the ability of a defamation plaintiff to seek redress in the most suitable forum.

The Eleventh Circuit's reasoning is also flawed because the court erroneously held that *Calder* required a quantitative analysis of the defendant's participation in the preparation and distribution of the offending defamation.

Several circuits have addressed the issue of whether the level of circulation of the offending publication in the forum state is determinative in the personal jurisdiction analysis under *Calder. See, e.g., Gordy v. Daily News, L.P.,* 95 F.3d 829 (9th Cir. 1996); *Dakota Industries, Inc. v. Dakota Sportswear, Inc.,* 946 F.2d 1384 (8th Cir. 1991); *Burt v. The Board of Regents of the University of Nebraska,* 757 F.2d 242

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[12]The *Calder* effects test has also been applied to provide a basis for personal jurisdiction over nonresident defendants who commit other torts with knowledge that their actions would cause harm to plaintiffs in their own home state. *See e.g., Dakota Industries, Inc. v. Dakota Sportswear, Inc.,* 946 F.2d 1384 (8th Cir. 1991) (exercise of personal jurisdiction over trademark owner's competitor for intentional tort allowed even though competitor asserted its products were marketed as result of unilateral actions of others).

(10th Cir. 1985), *vacated on other grounds, Connolly v. Burt,* 475 U.S. 1063 (1986).

In *Gordy,* the Ninth Circuit found that a New York newspaper's contacts with California were sufficient for purposes of exercising specific personal jurisdiction over it and its columnists in a defamation action brought by a California resident even though the newspaper had only 13 to 18 subscribers in California. *Gordy*, 95 F.3d at 833.

In *Dakota Industries*, the Eighth Circuit held that the circulation figures of the publication in question are not determinative of the personal jurisdiction analysis under *Calder*. In considering whether personal jurisdiction could be exercised over a nonresident company that infringed upon the plaintiff's trademark by distributing unlicensed sportswear in the plaintiff corporation's home state of South Dakota, the court found that, although the Defendant did not have as strong of a "sales presence" in South Dakota as the *National Enquirer* had in California, "these distinctions do not prevent the applicability of *Calder* to the facts of this case." *Id.* at 1391.

In *Burt,* the Tenth Circuit addressed the issue of whether jurisdiction under *Calder* is dependent on the circulation figures of the offending publication in the forum state. Answering this question in the negative, the court held that personal jurisdiction could be exercised over a nonresident defendant who mailed a single defamatory letter from Nebraska to Colorado where the letter caused the revocation of plaintiff's staff privileges at a Colorado hospital. The Tenth Circuit specifically held:

> Although the libel in *Calder* was pursuant to a commercial enterprise, whereas here the alleged defamation resulted from a single letter, we do not find this distinction significant in view of the Court's repeated emphasis in *Calder* on the intentional nature of the defendants' conduct and its calculated injurious effect in the forum state.

Burt, 757 F.2d at 245. Therefore, under *Calder*, the specific number of interviews in which Patchett voluntary participated should have been irrelevant to the Eleventh Circuit's determination of minimum contacts.

To reiterate, the judicial system's interest in providing injured parties reasonable access to redress for the *intentional* infliction of injury must outweigh the judicial system's interest in shielding the *intentional* tortfeasor from suit in a foreign jurisdiction.

Here, Patchett's statements provided a substantial basis for the Article. Patchett's defamatory statements concerned Jaisinghani's business activities in Florida. Patchett knew that Plaintiff was a Florida resident when he made the defamatory statements to a nationally-distributed newspaper. That the *Kansas City Star* does not have its largest circulation in Florida should not have been a determinative factor in the Eleventh Circuit's opinion if the court properly applied the factors as enunciated in *Calder* to the instant action for the intentional tort of defamation. [13]

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[13]This Court did use a quantitative argument in a defamation action in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984). In Keeton, the plaintiff did not reside in New Hampshire nor had any other contacts with the forum state. The plaintiff had chosen New Hampshire solely because that state offered the only remaining forum not barred by the statute of limitations. In conferring in personam jurisdiction, the *Keeton* Court emphasized that *Hustler* had voluntarily chosen to enter the New Hampshire market where it sold substantial magazines per month. The magazine defendant continuously and deliberately exploited the market of the forum was sued on a cause of action that arose out of the very activity being conducted in the forum state. *Id.* at 780-81. Thus, the Court used a quantitative analysis to find the requisite intent and effect on the forum state required by *Calder*.

II.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ David T. Azrin, Esq.
David T. Azrin, Esq.
(Counsel of Record)

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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED DECEMBER 16, 1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-4534
Non-argument Calendar

D.C. Docket No. 96-170-CIV-DAVIS

GUL JAISINGHANI, individually,

Plaintiff-Appellant,

v.

ANTHONY PATCHETT,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(December 16, 1996)

Before KRAVITCH, COX and DUBINA, Circuit Judges.

PER CURIAM:

The issue presented in this appeal is whether the district court correctly determined that it did not have personal jurisdiction over the defendant/appellee Anthony Patchett ("Patchett"), a Los Angeles County, California prosecutor. This court reviews a dismissal for lack of personal jurisdiction *de novo. Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990).

The plaintiff has the burden of proving a prima facie case that the court has personal jurisdiction over the defendant. This showing requires a two-step analysis. *Id.* First, the plaintiff must show that the Florida long-arm statute is satisfied. Second, the plaintiff must show that exercising jurisdiction under this statute would not offend "traditional notions of fair play and substantial justice." *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 292, 100 S.Ct. 559, 564, 62 L.Ed.2d 490 (1980) (citation omitted). The district court correctly found that the plaintiff in the present case met the first step of the analysis. The real issue in the case then is whether Patchett's contacts with Florida were sufficient to hale him into court without violating "traditional notions of fair play and substantial justice." *Id.*

The record demonstrates that Patchett directed certain comments to a reporter for a Kansas City newspaper. The comments came in response to the reporter's questions about Jaisinghani whom Patchett was prosecuting in Los Angeles. Jaisinghani filed a complaint (sic) for defamation on the basis of articles that made their way to Florida through the actions of the Kansas City newspaper and other third persons. As we explained in *Madara,* those facts do not establish sufficient minimum contacts to satisfy the requirements of the Due Process Clause of the United States Constitution. Moreover, we reject Jaisinghani's argument that the Supreme Court's decision in *Calder v. Jones,* 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), supports the exercise of personal jurisdiction in this case. In fact, all of the cases that Jaisinghani relies upon are distinguishable from the present case because they involved defendants who actively participated in the preparation or distribution of the offending publication. Finally, we reject Jaisinghani's argument that the district court should have given him an opportunity to amend his complaint before dismissing it.

For the foregoing reasons, we affirm the district court's judgment of dismissal for lack of personal jurisdiction.

AFFIRMED.

APPENDIX B

ORDER OF DISMISSAL OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DATED MARCH 26, 1996

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 96-0170-CIV-DAVIS
Magistrate Judge Johnson

GUL JAISINGHANI,

Plaintiff,

v.

ANTHONY PATCHETT,

Defendant.

ORDER

BEFORE THIS COURT is the Defendant's Motion to Quash Service and Dismiss the Complaint for Lack of Personal Jurisdiction (filed January 30, 1996). The parties have fully briefed these issues, and a hearing was held on March 8, 1996. Because the Court finds that Patchett has insufficient contacts with the state of Florida, the Court will GRANT Patchett's Motion to Dismiss.

FACTS

This case arises from a telephone interview Patchett gave a reporter for the *Kansas City Star*, a local Missouri newspaper. Patchett, who is an assistant district attorney in California,

had prosecuted the Plaintiff in Los Angeles on criminal charges. The Missouri paper was doing an unrelated article about the Plaintiff's fund-raising efforts for charitable organizations, focusing specifically on whether these organizations were receiving a fair percentage of the money raised.

Patchett conducted a telephone interview from California with a reporter from the paper, who was located in Missouri. Patchett is a resident of California, and states in his affidavit that he has never been in Florida or had any business or property in this state.

The only connection to Florida (other than the fact that the Plaintiff lives here) is that some copies of the *Kansas City Star* reach this state. The *Kansas City Star* is available in this state through specialty newspaper shops and on-line computer services.

ANALYSIS

The Plaintiff has the burden of making a *prima facie* case that the Court has personal jurisdiction over the Defendant. This showing requires a two-step analysis. *Madara v. Hall,* 916 F.2d 1510, 1514 (11th Cir. 1990). First, the Plaintiff must show that the Florida long-arm statute is satisfied. Second, the Plaintiff must show that exercising jurisdiction under this statute would not offend traditional notions of "fair play and substantial justice." *See Worldwide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

The Plaintiff has met the first step of the analysis. The Florida long-arm statute is satisfied if a person, either directly or through an agent, commits a tortious act within the state. Fla. Stat. Ann. 49.193(1)(b) (West Supp. 1990). The tort of libel is generally held to occur wherever the offending material is circulated. *Madara,* 916 F.2d at 1515. There is no dispute that some copies of the *Kansas City Star* reach Florida, and therefore, a tortious offense may have occurred here.

The real issue in this case is whether Patchett's contacts with Florida are sufficient to hale him into court without violating "traditional notions of fair play and substantial justice." In *Madara,* the Eleventh Circuit upheld the district court's finding that it did not have personal jurisdiction over an out-of-state defendant who had conducted a telephone interview with a California music magazine. The defendant, singer Daryl Hall, made derogatory comments about the plaintiff in a telephone interview to a reporter for a music magazine. This call was initiated from Hall in New York to the reporter's office in California. Although the Court recognized that some copies of the magazines might have been distributed in Florida, it described the number as "very few." The Court stated that "[s]imply giving an interview to a reporter is not enough to cause Hall to anticipate being haled into court in Florida." *Id.* at 1519.

In this case, the call was placed between offices in California and Missouri. The only connection to Florida is that some copies of the *Kansas City Star* are available here. The *Kansas City Star,* however, is not widely-distributed in Florida. This newspaper is available only through on-line computer services or through specialty newspaper shops. Nor has the plaintiff shown that the newspaper solicits advertisements from Florida businesses at such a level that Patchett should have realized that he could be sued in this state.

The real connection to Florida is that the Plaintiff lives here. Personal jurisdiction, however, is a privilege of the Defendant, not of the Plaintiff. Accordingly, it is ORDERED AND ADJUDGED that Defendant's Motion to Quash Service of Process and Dismiss the Complaint for Lack of Personal Jurisdiction is GRANTED. The case is CLOSED. All pending motions not discussed are DENIED as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 26th day of March, 1996.

EDWARD B. DAVIS
UNITED STATES DISTRICT
JUDGE

copy:
Magistrate Judge Johnson
David T. Azrin, Esq.
Timothy R. McCarthy, Esq.

APPENDIX C

ORDER GRANTING APPELLEE'S MOTION TO STRIKE APPENDIX TO REPLY BRIEF DATED DECEMBER 3, 1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-4534

GUL JAISINGHANI, individually,

Plaintiff-Appellant,

v.

ANTHONY PATCHETT,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Appellee's motion to strike appendix to reply brief, or in the alternative, to file a supplement brief, is GRANTED as to striking the appendix to the reply brief, and DENIED AS MOOT, as to filing a supplemental brief.

UNITED STATES CIRCUIT
JUDGE

APPENDIX D

ORDER DENYING APPELLANT'S PETITION FOR REHEARING DATED JANUARY 24, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-4534
Non-argument Calendar

GUL JAISINGHANI, individually,

Plaintiff-Appellant,

v.

ANTHONY PATCHETT,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida

Before COX and DUBINA, Circuit Judges, and KRAVITCH, Senior Circuit Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, Gul Jaisinghani, is denied.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

APPENDIX E

JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED FEBRUARY 3, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-4534
Non-argument Calendar

D.C. Docket No. 96-170-CIV-DAVIS

GUL JAISINGHANI, individually,

Plaintiff-Appellant,

v.

ANTHONY PATCHETT,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(December 16, 1996)

Before KRAVITCH, COX and DUBINA, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the

said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay defendant-appellee the costs on appeal to be taxed by the Clerk of this Court.

Entered: December 16, 1996

For the Court: Miguel J. Cortez, Clerk

By: _____
Deputy Clerk

ISSUED AS MANDATE: 2/3/97